SCHAPIRO DECLARATION EXHIBITS CONTINUED

Schapiro Exhibit 11

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

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THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED AND BOURNE CO., ET AL., ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,,	)	
PLAINTIFFS, vs.	)	07 CIV. 3582(LLS)
YOUTUBE, INC., YOUTUBE, LLC AND GOOGLE, INC.,,	)	
DEFENDANTS.	)	
VIACOM INTERNATIONAL INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, AND BLACK ENTERTAINMENT TELEVISION, LLC,	)	
PLAINTIFFS, vs.	)	07 CIV. 2103 (LLS)
YOUTUBE, INC., YOUTUBE, LLC AND GOOGLE, INC.,,	)	
DEFENDANTS.	)	

VIDEOTAPED DEPOSITION OF COURTNEY NIEMAN
WEDNESDAY, DECEMBER 16, 2009
PALO ALTO, CALIFORNIA

Job No. 18293

UNITED STATES DISTRICT COURT

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VIDEOTAPED DEPOSITION OF COURTNEY NEIMAN, TAKEN ON BEHALF OF THE DEFENDANTS, AT 9:28 A.M., WEDNESDAY, DECEMBER 16, 2009 AT 650 PAGE MILL ROAD, PALO ALTO, CALIFORNIA BEFORE MARY JACKSON, CSR NO. 8688, PURSUANT TO NOTICE.

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STUART PETTIGREW, Videographer

identification.)

12:08 MR. KRAMER: Q. Do you recognize Exhibit 15?

12:08 A. Yes, I do.

12:08 Q. What is it?

12:08 A. It's a -- hang on. I'm getting to the page where there's actually printing. Holy smokes. We cut down a forest to do this one.

12:08 Q. Mm-hmm.

12:08 A. I don't recall this format of this report. However, I do recall the report in general. It was part of the weekly process of informing our clients what we did based on their instructions.

12:08 Q. In Exhibit 15, there is an e-mail exchange on the cover page between Bay and Viacom representatives including Ms. Hallie, Mr. Cahan, you're included as a cc. In the first in time message, Ms. Arizala says, "Please review the enclosed YouTube, Google Video, MySpace and Yahoo! Video approved notice sent rule."

12:09 A. Mm-hmm.

12:09 Q. Do you know what that's a reference to?

12:09 A. It would be, here's the report for the actions you told us to take.

12:09 Q. But I'm specifically asking about the

"approved notice sent rule," not the report itself.

12:09 A. I don't know what -- what Deana -- why she chose that phrase. But in my dealings with Deana as a manager, that's -- I would ask her what she meant by that.

12:09 Q. The last four pages of Exhibit 15 --

12:09 A. Yeah.

12:09 Q. -- are one-page charts entitled MTV Agent Asset Rule List for each of the four services Ms. Arizala mentions in her message: YouTube, MySpace, Google Video, and Yahoo! And there is a list of shows in common among each of the four lists. Do you see that?

12:10 A. Yes.

12:10 Q. Do you recognize this as the rules that BayTSP was to follow with respect to each of those services at the time?

12:10 A. I recall that this table was the representation of what client services, Deana, myself, understood as to how BayTSP was to enforce these titles.

12:10 Q. Got it. You were involved in helping to prepare these asset agent rule lists?

12:10 A. Inasmuch as the manager of client services e-mails, phone calls, yeah, I'm sure it came up.

12:11 Q. Okay.

12:11 A. Please do this; please do that.

12:11 Q. If you take a look at the -- let me see if I can do it this way. Can you explain to me what these rules were looking at, these charts as of November 6th, 2006?

12:11 A. Yes. We will take, for example, column one would be the content order. So Spice TV, Comedy Central, Viacom in general, Country Music Television, blah, blah, blah. The second one would be the specific network of that content holder that those titles belong to. And then notices were to be sent on the complete entire show versus a clip, some subset, and, with God as my witness, I don't remember what -- other than looking at it here, that the rule would be to -- would be used to define what is a clip.

12:12 Q. On which action should be taken, right?

12:12 A. Yeah. So full was fairly straightforward. It's the whole episode. Whereas -- whether it had commercials or not was irrelevant. It was, did you have the whole show? Clip would have been anything less than the whole show. So two and a half would be in minutes as opposed to seconds or days or greater.

12:12 Q. So these charts reflect that at this time, the full episode rule was in effect at YouTube, right?

12:12 MR. COX: Objection. Document speaks for itself.

12:12 MS. COLEMAN-BISHOP: Mischaracterizes -- objection mischaracterizes the document.

12:13 THE WITNESS: Okay. I'm lost.

12:13 MR. KRAMER: Q. Sure.

12:13 A. Because I don't -- as I read this, these rules for engagement were for -- "please review the enclosed YouTube, Google Video, MySpace, Yahoo! Video."

12:13 Q. We have one page for each of the four services that you just mentioned, and on each page there are the rules that you just described, but they differ.

12:13 A. Oh, okay.

12:13 Q. So for the page entitled YouTube Approved Notice Sent, which is the first of the four charts --

12:14 A. Yes. There is full rule -- full assets is the rule for the YouTube page; full assets is for the Google page; full assets and some clips for MySpace; and full assets and some clips for Yahoo!

That's what that tells me.

12:14 Q. And my question is, do you have any insight into why the rules for YouTube and Google Video were different than the rules for MySpace and Yahoo! at the time?

12:14 A. No.

12:14 MS. COLEMAN-BISHOP: Objection. Calls for speculation.

12:14 THE WITNESS: No, I do not.

12:14 MR. KRAMER: Q. Were you communicating Viacom's takedown rules to YouTube at the time?

12:14 A. No.

12:14 Q. Why not?

12:14 A. We didn't communicate our practices to anyone. To -- I mean inasmuch as I didn't tell YouTube or MySpace or AT&T or Canada Net, I didn't tell -- I and none of my staff would have communicated any rules. We just sent the DMCA notice.

12:15 Q. Were you under instructions not to reveal Viacom's takedown rules to YouTube?

12:15 A. If it's in the -- if it's in my NDA or work rules. I don't remember somebody giving me an explicit instruction. I don't recall somebody saying, don't tell, but --

12:15 Q. Do you think it would have helped YouTube follow Viacom's wishes with respect to having its content appear on YouTube --

12:15 MS. COLEMAN-BISHOP: Objection. Calls for speculation. No matter where you go with the question, it's going to call for speculation.

12:15 MR. KRAMER: Yeah, but you have to let me get the question so the record's clear, and then you can object. And if I think your objection --

12:16 MS. COLEMAN-BISHOP: Don't lecture me on how to defend a --

12:16 MR. KRAMER: No, Counsel, it's not just proper. It's just not proper. You have to let me get the question out so we can make the record, and then if you have an objection, you can make it. I can decide whether I want to restate the question or not. But if you object in the middle of the question, we don't even know whether your objection is going to be meritorious. So just wait until I get the question out. That's all. Just courtesy. Okay?

12:16 MR. KRAMER: Q. Do you think it would have helped YouTube follow Viacom's wishes with respect to having its content appear on YouTube if Viacom had communicated these kinds of rules to

putting them together and creating a new -- a new piece of art, a new whatever you want to call it, putting a new voice stream over a clip for humor sake. That's -- taking more than one piece of original work and reworking it to come up with something else.

1:11 And that's when I -- someone told me about Andy Warhol. I mean I knew of the images. I just didn't realize that was of consequence. He took something everybody knew, an icon, and did something to it and made it different. So Andy Warhol's pictures, in my mind, were a mash-up.

1:11 What defines a clip? I don't know that I ever got that answered. You know, let's go to the clip. You know, in sports, I don't know. So I don't know. It was -- it was struggling to understand the process.

1:11 Q. So the next question on the list is one about which I'd like to ask you. You asked Mr. Ishikawa, "Is setting any time limit arbitrary?" Sitting here today, do you believe that setting time limits for the clips that should be taken down versus the clips that should be left up was an arbitrary process?

1:12 MS. COLEMAN-BISHOP: Object to form.

1:12 THE WITNESS: I don't have an opinion.

1:12 MR. KRAMER: Q. Okay. How about back when you were a manager at BayTSP?

1:12 A. Same answer. I didn't have an opinion. Did what I was told.

1:12 MR. COX: Same objection.

1:12 MR. KRAMER: Fair enough.

1:12 MS. COLEMAN-BISHOP: Can I ask a quick question here?

1:12 MR. KRAMER: Sure.

1:12 MS. COLEMAN-BISHOP: Courtney, what exactly is a mash-up? What is your understanding of one?

1:12 THE WITNESS: Two or more pieces of original work being put together to create a third.

1:12 MS. COLEMAN-BISHOP: Okay.

1:13 (Whereupon Exhibit No. 18 was marked for identification.)

1:13 MR. KRAMER: Q. Okey doke. Exhibit 18 is an e-mail exchange between BayTSP and MTVN representatives on which you were copied with the subject line, Video Takedown 11/14/2006. And contained within the e-mail exchange itself, there is a report entitled MTV Network's Video Takedown Update. That's at the bottom of the first page.

The title is on the bottom of the first page. Then the report starts on page 2.

1:14 A. Yes.

1:14 Q. Let me ask you if you've seen reports like this at BayTSP?

1:14 A. Yes.

1:14 Q. This is a report on the application of the Viacom takedown effort through BayTSP on that day, November 14th, 2006, right?

1:14 A. Yes.

1:14 Q. And in the chart at the top of page 2 there are the four services that we looked at earlier: YouTube, MySpace, Yahoo! Video, and Google Video, right?

1:14 A. Yes.

1:14 Q. So am I reading the chart correctly in saying that it shows on that day BayTSP sent takedown notices for 22 episodes and 36 clips on YouTube?

1:14 A. Yes.

1:14 Q. Okay. In the next column it says, "Passed on." Do you know what that means?

1:15 A. Means we determined what we saw didn't fall within the rules that we had been given, too long, too short, it wasn't the clip.

1:15 Q. So on that day, Bay found and sent takedown notices to YouTube for 58 videos containing what it thought was Viacom content?

1:15 A. Yes.

1:15 Q. And on that day, it also found and left out or passed on 555 videos on the YouTube service, right?

1:15 A. Of the ones they reviewed, yes.

1:15 Q. So 555 clips that were passed on because they fell outside of Viacom's takedown rules, right?

1:15 MR. COX: Objection. Asked and answered.

1:15 THE WITNESS: Trying to make sure I understand. I believe that is correct.

1:16 MR. KRAMER: Q. And the reason that BayTSP left up on YouTube those 555 clips it found was because Viacom directed BayTSP to leave them up, right --

1:16 MR. COX: Objection. Calls for speculation.

1:16 MR. KRAMER: Q. -- as part of its instructions?

1:16 A. No, that would not be correct.

1:16 Q. Why is that not correct?

1:16 A. We were not given instructions, per se, of what to leave up.

1:16 Q. Fair enough. The converse of an instruction to take something down, however, is it implicitly to leave it up, right?

1:16 A. Yes.

1:16 Q. Okay. In the next table down in the document, there's a chart labeled P2P?

1:17 A. Yes.

1:17 Q. Can you explain what that shows?

1:17 A. Those were files that we found on those three P2P networks: Gnutella, eDonkey and BitTorrent.

1:17 Q. That you believed contained Viacom content?

1:17 A. Yes.

1:17 Q. And so on that day, BayTSP representatives identified 7,626 pieces of Viacom content on the BitTorrent service, correct?

1:17 A. That's what this report would suggest.

1:17 Q. So Bay had found a far greater volume of what it thought was Viacom content on P2P networks that day than it had found on YouTube, right?

1:17 MR. COX: Object to the form.

1:18 THE WITNESS: It would be an inaccurate comparison.

1:18 MR. KRAMER: Q. Hmm. Well, I suppose I

should ask you why that's an inaccurate comparison.

1:18 A. Why can't you make a Yugo go as fast as a drag race rail car?

1:18 Q. I take it you're a fan of car racing. I'm getting that sense.

1:18 A. It is not designed to do so. Why can't you find bags of oranges that have counts of upwards to 1,000 like you would if you bought a bag of peanuts? It's apples and oranges. You can't make that comparison.

1:18 The kind of things you can find on a P2P network have a broader base, a global base, than you would find on a particular video service regardless of service. So --

1:19 Q. Can you elaborate on that?

1:19 A. There's no relationship between the number we found or passed on a service -- on a single point of source, MySpace server, than we would find on the untold -- and I say that because I don't know -- the untold number of BitTorrent servers that are out there on the planet Earth. There's more possibilities to find things on BitTorrent than you would find on YouTube or MySpace or whatever just because of the sheer number of source points.

1:19 Q. Okay. Let's -- let me come it at slightly

differently. In the chart beneath the P2P chart there's a list by asset of Viacom content --

1:20 A. Mm-hmm.

1:20 Q. -- that rolls up into the 22 episodes, 36 clips and 556 clips passed on for the day, right?

1:20 A. Yes.

1:20 Q. And so on that given day Viacom encountered 316 different pieces of content on the YouTube service that appeared to contain content from South Park, it took down one clip?

1:20 A. Yes.

1:20 Q. It took down one clip, and it passed on 315, correct?

1:20 A. Yes.

1:20 Q. So I'm reading that correctly. The counts for the P2P services that appear in the chart above the asset-by-asset breakdown --

1:20 A. Mm-hmm.

1:20 Q. -- those counts were for the same list of assets that appear in the breakdown beneath it, right?

1:20 MR. COX: Object to form, lacks foundation.

1:21 THE WITNESS: I don't know in that -- the start of this, I don't know if the P2P chart refers

to the assets below or the asset above, the European Music Awards 2006 or to the asset list below. I don't remember.

1:21 MR. KRAMER: Q. Take a look, if you would, at the page that starts -- the page that ends with the Bates No. BayTSP 522. See that's the topic heading P2P Not Sent?

1:21 A. Excuse me. Yes.

1:21 Q. And there's a breakdown by asset which matches the same assets in the --

1:21 A. Okay.

1:21 Q. -- prior YouTube chart, right?

1:21 A. Yes. Okay.

1:21 Q. So the totals in the P2P chart for each of the three P2P services, Gnutella, eDonkey and BitTorrent, those correspond to the specific list of assets that BayTSP was charged with identifying for YouTube as well, correct?

1:22 A. Yes.

1:22 MR. COX: Object to the form.

1:22 MR. KRAMER: Q. So am I reading the chart correctly that on this day, November 14, 2006, with respect to P2P services, BayTSP identified some 6500 pieces of content on P2P networks that it believed contained content from Viacom's show South

1:34 A. No.

1:34 Q. Why not?

1:34 A. There were no rules at the time for a time limitation -- when I first became aware of YouTube, MySpace, video sharing, videos were five minutes, videos were an hour, videos were two hours. There was no rule that said, okay, you can't put up just part of it. And there was nothing there -- from the videos that I watched, I don't recall ever seeing an entire movie, hundred and two minutes in its entirety. But I can think of a number of times, including now, where you can see whole content on YouTube.

1:35 I like watching the Glenn Beck show. It is approximately a 38-minute, sucking out commercials, and some people put it up in two parts. Some people put it up in six parts. Some people put it up in -- so the point is, nothing about the clip identifies its source.

1:35 Q. Okay. But couldn't you tell if it was a full episode of South Park, that it wasn't authorized to be there?

1:35 A. No.

1:35 Q. The whole thing was there. Doesn't that give it away?

1:35 MR. COX: Object to the form.

1:36 THE WITNESS: No.

1:36 MR. KRAMER: Q. Do you think it's likely that someone with authority to do it at Viacom was uploading full episodes of South Park to YouTube?

1:36 MS. COLEMAN-BISHOP: Objection. Asked and answered, argumentative. She's already said no. She's not able to identify whether or not any one of these full episodes had any authority to be posted or did not.

1:36 MR. KRAMER: Okay.

1:36 MS. COLEMAN-BISHOP: There's no way to tell from a full episode whether or not the person that uploaded it had authority. No matter how many times you ask the question, you're going to get the same answer. The answer's no.

1:36 THE WITNESS: I'm with her.

1:36 MR. KRAMER: Q. You agree with the sentiment your attorney just expressed?

1:36 A. Yeah. There is no connection between what you see in YouTube, the person who posted it, and the person who produced it. There is no identifiable link.

1:36 Q. Meaning there's no way to tell --

1:36 A. Correct.

1:36 Q. -- whether it's authorized?

1:36 A. Correct.

1:37 (Whereupon Exhibit No. 21 was marked for identification.)

1:37 MS. COLEMAN-BISHOP: Can we go off the record just one second?

1:37 MR. KRAMER: Sure. Off the record.

1:37 THE VIDEOGRAPHER: The time is 1:38. Off the record.

1:37 (Whereupon a recess was taken.)

1:37 THE VIDEOGRAPHER: Time is 1:38. On the record.

1:37 MR. KRAMER: Q. Okay.

1:37 A. Okay.

1:37 Q. Ms. Nieman, Exhibit 21 is a similar e-mail exchange you had with someone named Misty at YouTube the same day as Exhibit 20, right?

1:38 A. Yes.

1:38 Q. Your message starts with the same list of clips on YouTube and the same requests, "Please take this down immediately." Misty responds that she removed the videos but she, too, thought that the account might have been set up by Comedy Central. Do you see that?

1:38 MR. COX: Object to the characterization

of the document.

1:38 THE WITNESS: I don't know what Misty was thinking. As I read this, she had some belief that they may have come from a valid source.

1:38 MR. KRAMER: Q. And you wrote, "Referring to this account, South Park Studios, they are associated with Comedy Central, but MTVN has the exclusive rights"?

1:38 A. Yes.

1:38 Q. So you thought at that point that the user South Park Studios was associated with Comedy Central, right?

1:38 A. I believe our client informed us of that.

1:39 Q. Do you recall who specifically?

1:39 A. No, I do not.

1:39 Q. Can you turn back to Exhibit 8, which is the work digest for Project 1 for MTV?

1:39 A. Got it.

1:39 Q. And if you could look at the second page of Exhibit 8 --

1:39 A. Yes.

1:39 Q. Under where it says, "Description of Activity," it says, "YouTube is no longer an active protocol in Project 1 because of the implementation of Project 2." Do you know what that means?

1:49 Q. Then it has a description of activity under the project details section in this digest?

1:50 A. Mm-hmm.

1:50 Q. Does that accurately reflect your understanding of the project that BayTSP was tasked with by Viacom?

1:50 A. Give me a moment.

1:50 MR. COX: Objection. Vague, ambiguous, lacks foundation.

1:50 THE WITNESS: Yes, that is an accurate description of what we were engaged to do.

1:50 MR. KRAMER: Q. Okay. Do you recall Viacom giving BayTSP a specific instruction to accumulate a large list of clips on the YouTube service that BayTSP believed contained Viacom content rather than send takedowns as BTS -- as BayTSP became aware of those clips?

1:51 MR. COX: Object to the form.

1:51 THE WITNESS: Yes.

1:51 MR. KRAMER: Q. And who gave that instruction?

1:51 A. I don't recall. My recollection, it would have been Evelyn. Evelyn would have been the one who informed me.

1:51 Q. Viacom instructed BayTSP to accumulate

clips it identified so that Viacom could send one massive takedown request to YouTube instead of sending takedowns as BayTSP became aware of clips, right?

1:51 MR. COX: Objection. Calls for speculation.

1:51 THE WITNESS: I don't know the motivation for it. I don't -- I don't know.

1:51 MR. KRAMER: Q. Okay. So when BayTSP would identify clips of content on the YouTube service in the course of this project that BayTSP believed contained Viacom content, BayTSP's instructions were not to send a takedown notice until 100,000 clips were accumulated, right?

1:52 MR. COX: Object to the form.

1:52 THE WITNESS: I believe the instruction was to hold the clips. I don't remember a specific number being conveyed to us initially. At some point somebody may have said 50, 80, 100, 200. I don't know. I know the instructions were to hold those notices.

1:52 MR. KRAMER: Q. Well, the description of the activity that is in the work digest for this project says once 100,000 infringements have been met, that was the --

1:52 A. Yes.

1:52 Q. That was the figure?

1:52 A. That's in February. This project began in December. When this began, I don't remember anybody giving us a target.

1:52 Q. Well, Exhibit 8, which is -- sorry. Not Exhibit 8. Exhibit 22 also refers to 100,000 clip figure, right?

1:53 A. It does, but I don't remember it.

1:53 Q. Hmm. You don't remember -- you do remember that it was part of the project. You just don't remember when the instruction to collect up 100,000 was given?

1:53 A. Yes.

1:53 Q. Okay. Don't you recall being informed that Viacom was queuing up takedown notices as part of a strategy for dealing with YouTube?

1:53 MR. COX: Object to the form.

1:53 THE WITNESS: No.

1:54 (Whereupon Exhibit No. 24 was marked for identification.)

1:54 MR. KRAMER: Q. Exhibit 24 is an e-mail exchange between Mr. Ishikawa, Bay's CEO, and Donna Cooper of Black Entertainment Television, dated January 24th, 2007, on which you are copied. Has

the subject BET Asset List.

1:54 A. Yes.

1:54 Q. In the last in time e-mail to Ms. Cooper, which you received, Mr. Ishikawa writes that BayTSP was, quote, queuing up the takedown notices as instructed by Adam at MTVN. Do you see that?

1:54 A. Yes.

1:54 Q. You received this e-mail, did you not?

1:55 A. Well, yes, it came into my inbox.

1:55 Q. You were informed in this e-mail, were you not, that BayTSP had been instructed by Adam at MTVN to queue up takedown notices, right?

1:55 MR. COX: Objection. Document speaks for itself.

1:55 THE WITNESS: I may have read this. It didn't register. When I would receive e-mails regarding things, I looked at: Does this matter to me; are they giving me a different set of instructions; what to take down; are we getting a new asset; are we taking down an asset? Okay. Nothing in this rings any bells to me other than that there's a woman named Donna Cooper who has some influence or direction over BET. But it doesn't tell me to start or stop anything, so I wouldn't have paid attention to it.

client services.

1:58 MR. KRAMER: Q. Okay.

1:58 A. BayTSP, whoever would be, would be the head of that project. My role in that project, would be to oversee Deana who was the Paramount and Sarah who was Viacom. But beyond that, we didn't -- client services never dictated what was done, how it was done, why it was done, when it was done.

1:59 Q. What did it do?

1:59 A. We were told, review the infringements, send notices, build reports to inform our clients of what was sent. That's it. That's what client services did.

1:59 Q. The Sarah you're referring to is whom?

1:59 A. Cruz.

1:59 Q. And her job was what?

1:59 A. She was a client services manager.

1:59 Q. For what client?

1:59 A. I believe it was Viacom.

1:59 Q. And Deana Arizala was Paramount?

1:59 A. Yes.

1:59 Q. And they both reported to you?

1:59 A. Yes.

1:59 Q. So at this time, Viacom was learning of the presence of clips on the YouTube service that

BayTSP believed contained its content, and BayTSP was instructed not to send out notices for those clips, right?

2:00 MR. COX: Object to form, asked and answered.

2:00 THE WITNESS: I don't know what -- I don't know what Viacom was doing. I don't know what anybody at Viacom was doing. I just know, my level on down, don't send notices, just hold them.

2:00 MR. KRAMER: Q. Okay. So BayTSP was instructed to do that by Viacom, hold the notices and not send them to YouTube?

2:00 MR. COX: Object to the form.

2:00 THE WITNESS: Based solely on the chain of command, client tells service, do this; service does that. So in this case Viacom is client, BayTSP is service. Client tells services, don't send notices, we don't send notices.

2:01 MR. KRAMER: Q. In the client contact information section of the work digest --

2:01 A. Okay.

2:01 Q. That's Exhibit 23.

2:01 A. Got it.

2:01 Q. On the page that ends with the numbers 128.

2:01 A. Okay. Give me a second. I'm almost there. Yes.

2:01 Q. There are two attorneys from Viacom's law firm, Jenner & Block, listed, Mr. Hohengarten and Ms. Tenney?

2:02 A. Mm-hmm.

2:02 Q. How were they involved in this mass takedown project?

2:02 MS. COLEMAN-BISHOP: Objection. Attorney-client privilege.

2:02 Anything that you may have any knowledge as to any communications with these two attorneys, instruct you not to answer the question so far as they would have been involved in any legal advice given to your former employer.

2:02 THE WITNESS: I don't know who they are.

2:02 MR. KRAMER: That takes care of that instruction.

2:02 MR. KRAMER: Q. There was a group of people in Washington, D.C. working on this project, right?

2:02 A. Haven't a clue.

2:02 Q. Okay. Do you recognize the name Warren Solow, other than the fact that it appears in this document? Do you remember hearing the name?

3:06 Q. Okay.

3:06 A. More than one month.

3:06 Q. BayTSP finally executed on this strategy of sending one mass takedown notice, right?

3:06 A. Yes.

3:06 Q. Do you remember the date?

3:06 A. No.

3:06 Q. I'll represent to you that it was February 2nd, 2007. We'll come back to that. So what happened on that date with respect to the transmission of the notice?

3:06 A. They went out, I believe, in blocks. In other words, we didn't -- we didn't have one e-mail with 100,000 or whatever it was. I believe they went out in blocks. I don't remember what the block size was. And I believe they were all transmitted within hours -- two, three -- I don't know for sure.

3:06 Q. Do you remember --

3:06 A. And then --

3:06 Q. Go ahead.

3:06 A. And then nothing else happened. Nobody breathed a sigh of relief or tipped a glass or anything. We just -- we sent notices, which is what we were doing all along.

3:07 Q. This was just ordinary practice?

3:07 A. Yes.

3:07 Q. Really?

3:07 A. Yes, thousands of notices goes out of the BayTSP every day, even as we speak.

3:07 Q. The transmission of this mass takedown notice to YouTube was just standard ordinary operating procedure for BayTSP?

3:07 MR. COX: Objection. Asked and answered.

3:07 THE WITNESS: No. The transmission of notices is standard operating procedure.

3:07 MR. KRAMER: Q. But this was a big deal, right?

3:07 A. For Viacom, I don't know.

3:07 Q. Was it a big deal for Bay?

3:07 A. No. It was different, but it wasn't a big deal.

3:07 Q. How is it different?

3:07 A. Because normally we find and send. This was a find, hold, send. That's all.

3:07 Q. Who from Viacom gave the launch command to BayTSP?

3:07 A. I don't remember.

3:08 (Whereupon Exhibit No. 29 was marked for identification.)

3:08 MR. KRAMER: Q. Exhibit 29 is a

transcript of an AOL Instant Message chat between you and others on BayTSP on February 2nd, 2007, right?

3:08 A. Mm-hmm.

3:08 Q. It's just a recording of a conversation that people were having online at the time, right?

3:08 A. Yes.

3:08 Q. Your AOL Instant Message chat name is BayTSP C-A-N-N-E, correct?

3:08 A. Correct.

3:08 Q. Who is BayTSP Spider?

3:08 A. I don't know.

3:08 Q. Bay Deana, is that Deana Arizala?

3:09 A. Yes.

3:09 Q. BayTSP Spider, Mark Ishikawa?

3:09 A. I can't remember. It could be. I don't know.

3:09 Q. Did you regularly communicate using Instant Message at BayTSP?

3:09 A. No.

3:09 Q. Did you regularly have joint conversations with all of these people on Instant Messaging?

3:09 A. No. Instant Messaging was the -- was an exception.

3:09 Q. Why was it that you were having a chat

Schapiro Exhibit 12

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY PARTNERS, COUNTRY MUSIC. TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION, LLC,	)	
Plaintiffs,	)	
vs.	)	NO. 07-CV-2103
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
vs.	)	NO. 07-CV-3582
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	

VIDEOTAPED DEPOSITION OF WARREN SOLOW
NEW YORK, NEW YORK
DECEMBER 18TH, 2009

JOB NO. 18304

VIDEOTAPED DEPOSITION OF WARREN SOLOW, held at the offices of Wilson, Sonsini, Goodrich & Rosati, PC, 1301 Avenue of the Americas New York, New York, pursuant to notice, before Maureen Ratto, Registered Professional Reporter and Notary Public of the State of New York on December 18, 2009, at 10:10 a.m.

A P P E A R A N C E S

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statement. I am simply telling you that you first need to establish that something that occurred in October of 2006 relates to the February, 2007 mass takedown request that is the subject of the 30(b)(6). Once you do that, I will not obstruct you from asking him questions about it. But you are not to -- allowed to ask him a series of questions then ask that, perhaps determine that it has nothing to do with the mass takedown request and then you will have been allowed to ask on the record a series of questions that have nothing to do with the scope of this examination. So you have my position.

If there is a question pending, you can raise it and -- and we will go from there. And I am more than happy to have that be the way in which we are going to conduct a 30(b)(6) because in my belief that is the proper way to conduct a 30(b)(6).

11:54:05 11:54:17 11:54:28 11:54:37 11:54:49

MR. RUBIN: That's fine. It

will be case-wide from now on.

Q. Mr. Solow, I'm sorry. I hope you weren't distracted by that colloquy as well.

11:54:58 A. No. I have nothing else to do.

Q. What was the rule in place for which clips would be included in the February 2nd, 2007 mass takedown?

A. I do not -- I -- I don't believe

11:55:24 that I could list out all the rules as they existed for that mass takedown off the top of my head.

Q. You were designated to testify on that topic today, weren't you?

11:55:41 A. Yes.

Q. And you prepared to testify on that topic today, didn't you?

A. Yes.

Q. And you're unable to do so?

11:55:47 MS. KOHLMANN: Objection. Misstates the record.

A. I -- if I were testifying as to the, you know, the substance of crime and punishment, I would hope that I

11:56:04 would not be asked to recite crime and

punishment verbatim from memory.

Q. Is it your testimony that the rule set for which clips will be removed from YouTube in connection with the February 2nd, 2007 mass takedown is as complicated as crime and punishment?

11:56:16

MS. KOHLMANN: Objection.

A. It could be for some people.

Q. Would it that be complicated for YouTube?

11:56:25

MS. KOHLMANN: Objection.

A. No. Because they would be able to refer to a list of rules as opposed to being asked to do it off the top of their head.

11:56:36

Q. Has YouTube been provided the list of rules?

MS. KOHLMANN: Objection, lacks foundation.

A. I don't know.

11:56:41

Q. As you sit here testifying on behalf of Viacom as a corporate representative, you don't know whether YouTube had been provided the list of rules that governed which clips were

11:56:49

included and excluded from the February 2nd, 2007 mass takedown?

MS. KOHLMANN: Objection as to form. You can answer.

11:57:01 A. I do not.

Q. Were the rules set forth in Exhibit 2 the rules that governed the February 2nd, 2007 mass takedown?

A. No.

11:57:19 Q. In what way did the rules in Exhibit 2 differ from the rules that established which clips would be included in the February 2nd, 2007 mass takedown?

11:57:33 A. I don't know specifically how they differed. I do know that the fall and winter of '06, going into '07, was a time where with every day we were acquiring additional knowledge as to

11:57:57 the characteristics of the massive infringement going on at YouTube and we learned at the time --

Q. I'm not asking for a speech about Viacom's litigation position, I'm

11:58:08 actually asking for a very specific